



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2147 FAX (603) 271-6588



Norman Bemis
P.O. Box 22
Marlborough, NH 03455

Alan Klotzbier
P.O. Box 93
Marlborough, NH 03455

**ADMINISTRATIVE ORDER
No. WD 04-018**

November 2, 2004

Re: Wetlands Bureau File #2004-476

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Norman Bemis and Alan Klotzbier pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Norman Bemis is an individual having a mailing address of P.O. Box 22, Marlborough, NH 03455.
3. Alan Klotzbier is an individual d/b/a APK Excavation having a mailing address of P.O. Box 93, Marlborough, NH 03455.

C. STATEMENTS OF FACTS AND LAW

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, the Commissioner of DES has adopted NH Code of Admin. Rules Wt *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without permit from [DES]."
3. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A".

4. Admin. Rule Wt. 304.05(a) states that "all skid trails, truck roads and log landings shall be located far enough from streams or ponds so that waterborne soil particles will settle out before reaching the streams or ponds."
5. Admin. Rule Wt. 304.05(b) states that "skid trails and truck roads shall be laid out using appropriate erosion control devices, as outlined in the *Best Management Practices for Erosion Control on Timber Operations in NH*, April 1996, so that the grade approaching a stream or pond is broken, and surface water is dispersed."
6. Admin. Rule Wt. 304.05(c) states that "culverts, bridges, pole fords or other crossings shall be installed on skid trails and temporary truck roads at all stream crossings in accordance with procedures outlined in the *Best Management Practices for Erosion Control on Timber Operations in NH*."
7. Norman Bemis is the owner of land located on Route 101 in Dublin, NH, more particularly identified in the Town of Dublin tax maps as Tax Map 5, Lot 2 ("the Property").
8. Alan Klotzbier was hired by Norman Bemis as the site contractor for the Property.
9. Richard Lyons was hired by Alan Klotzbier as the logging contractor for the Property.
10. On March 22, 2004, DES received from Norman Bemis a *Notification of Forest Management Activities Having Minimum Wetlands Impact* ("the Notification") for the Property. Alan Klotzbier signed the form as the forester/logger on the Notification.
11. The Notification states that the Property owner's signature certifies that "all logging contractors have been directed to conform to the *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire* (April, 1996) ("BMPs") and have been instructed to install crossings only as indicated on the attached map and sketches."
12. On March 26, 2004, DES personnel spoke to Alan Klotzbier regarding future wetland permits if the site became a subdivision and informed him that he must comply with all Forestry BMP's.
13. On April 1, 2004, DES issued a "Complete Forestry Notification" letter to Norman Bemis for the Property, acknowledging receipt of his Notification and stating that his Notification is sufficient to start work provided that he follows the BMPs and avoids wetlands and stream crossings where possible.
14. On April 4, 2004, Norman Bemis signed a *Notice of Intent to Cut Wood or Timber* ("Intent to Cut") for timber harvesting activities to occur on the Property. The Intent to Cut was filed with the Town of Dublin and identified Alan Klotzbier as the logger for the forestry operations to be conducted on the Property.
15. On April 7, 2004, DES received a complaint regarding conditions on the Property from a Department of Resources and Economic Development Forest Ranger alleging that a stream had

been rerouted, erosion controls had failed, a log landing had been located next to a pond, and the pond was cloudy.

16. On April 16, 2004, DES personnel conducted an inspection of the Property and observed the following:

- a. A log landing was located approximately 15 feet from a wetland and a seasonal stream, with failed erosion controls located between the landing and the wetland, in violation of BMPs;
- b. Violations of BMPs at four crossings, including the use of pole fords at high flow;
- c. Erosion controls had failed throughout the site and/or had been placed down gradient of the crossing within delineated wetland areas;
- d. A failure to use BMPs, such as water-bars, geo-textile fabric, and approach stabilization at intermittent stream and wetland crossings;
- e. Erosion from the skid trail at "Sediment Erosion Area One" per the attached crossing and impact location map dated April 22, 2004 had created approximately 20' x 30' (600 square feet) of fill and turbidity in the wetland area depicted as "Sediment Fill Area One" on the attached crossing and impact location map dated April 22, 2004;
- f. Approximately 5,600 square feet (approximately 3,000 square feet from the northwest side of "Crossing Three" to Wetland Flag Number "WD66" and approximately 2,600 square feet from the northwest side of "Crossing Four" to Wetland Flag Number "WD64" as depicted on the attached crossing and impact location map dated April 22, 2004) of erosion/sediment fill in forested wetlands; and
- g. Approximately 300 linear feet (approximately 200 linear feet of intermittent stream northwest of "Crossing Three" to Wetland Flag Number "WD66" and approximately 100 linear feet of intermittent stream northwest of "Crossing Four" to Wetland Flag Number "WD64" as depicted on the attached crossing and impact location map dated April 22, 2004) of seasonal intermittent stream impacts and fill from erosion/sediment.

17. Also on April 16, 2004, DES personnel requested that Richard Lyons and Alan Klotzbier voluntarily stop work on the site, except for measures necessary to stabilize the Property, and submit an erosion and sediment control plan and a restoration plan for review and approval by DES.

18. On May 19, 2004, DES received a restoration plan for the Property from Carl Hagstrom/Monadnock Septic Design. DES reviewed the restoration plan and determined that it was not adequate for approval.

19. On June 21, 2004, DES personnel inspected the Property and found that logging had resumed and was completed and that no attempt had been made to stabilize the Property or repair the

failed erosion controls. DES again requested that Alan Klotzbier stabilize the Property. Alan Klotzbier was informed at that time that further enforcement action would be taken.

20. Also on June 21, 2004, DES personnel observed new impacts in addition to the impacts observed on April 16, 2004 as follows:

- a. Approximately 1,000 square feet of fill in wetland along the east side of "Crossing One" as depicted on the attached crossing and impact location map dated April 22, 2004; and
- b. Approximately 3,000 additional square feet of fill in wetland along the southeast side of "Sediment Fill Area One" as depicted on the attached crossing and impact location map dated April 22, 2004 (a total of 3,600 square feet of impact to "Sediment Fill Area One").

21. On July 12, 2004, DES personnel contacted Alan Klotzbier and confirmed that he was aware the Restoration Plan submitted on May 19, 2004 to DES for the Property was not sufficient, determined that no further site stabilization had been completed, and informed him that DES would be taking enforcement action to ensure that the Property would be stabilized and restored.

D. DETERMINATION OF VIOLATIONS

1. Norman Bemis and Alan Klotzbier have violated RSA 482-A:3 by filling a 4,600 square foot area of wetland without a permit.
2. Norman Bemis and Alan Klotzbier have violated RSA 482-A:3 by filling a 5,600 square foot area of wetland without a permit.
3. Norman Bemis and Alan Klotzbier have violated RSA 482-A:3 by filling 300 linear feet of intermittent stream without a permit.
4. Norman Bemis and Alan Klotzbier have violated Admin. Rule Wt. 304.05(a) by locating a log landing adjacent to a wetland causing sediment to reach the wetland.
5. Norman Bemis and Alan Klotzbier have violated Admin. Rule Wt. 304.05(b) by failing to use appropriate erosion control devices on skid trails and truck roads as outlined by the BMPs.
6. Norman Bemis and Alan Klotzbier have violated Admin. Rule Wt. 304.05(c) by failing to comply with the BMPs for pole fords, specifically by using pole fords at high flow and failing to stabilize the approaches to the crossings.

E. ORDER

Based on the above findings, DES hereby orders Norman Bemis and Alan Klotzbier as follows:

1. **Within 30 days of the date of this Order**, prepare an erosion and sediment control plan ("Plan") for the Property, and submit said Plan to DES for review. The Plan shall include, at a

minimum, temporary and permanent erosion control measures necessary to stabilize the site, protect surface water quality, and prevent further impacts to surface waters. The Plan shall also include a schedule for implementing the measures described in the Plan.

2. Implement the Plan on the Property, as approved by DES, in accordance with the approved schedule.

3. **Within 30 days of the date of this Order**, submit a wetlands restoration plan to DES for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and include provisions for restoration of the wetland and surface waters impacted by activities at the Property. The following shall be submitted with the restoration plan:

- a. A plan with dimensions, drawn to scale, showing:
 - i. existing conditions and jurisdictional impacts on the sites, with delineated jurisdictional wetland boundaries, and land topography; and
 - ii. proposed conditions after reestablishing the jurisdictional areas;
- b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area;
- c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration areas;
- d. A description of the proposed construction sequence, equipment, methods for accomplishing restoration and anticipated restoration compliance date.
- e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum, monitoring progress reports for two successive growing seasons following completion of the restoration project. These reports should be submitted to DES on November 1, 2005, and November 1, 2006.

4. **Immediately** retain a certified wetland scientist to supervise the implementation of the restoration plan prepared in accordance with Item 3 above and to submit the restoration progress reports.

5. Implement the restoration plan proposed in accordance with Item 3 above only after receiving written approval, and as conditioned, by DES.

6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

William A. Thomas, Compliance Specialist
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: wthomas@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may request DES to reconsider the Order within 20 days of the date of the Order. The request for reconsideration must describe in detail each ground for the request. DES may grant a rehearing, if in its opinion, good cause is provided in the motion.


Filing an appeal or motion for reconsideration does not relieve Norman Bemis or Alan Klotzbier of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Norman Bemis and Alan Klotzbier remain obligated to comply with all applicable requirements, in particular restoration and stabilization of the Property. DES will continue to monitor Norman Bemis's and Alan Klotzbier's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

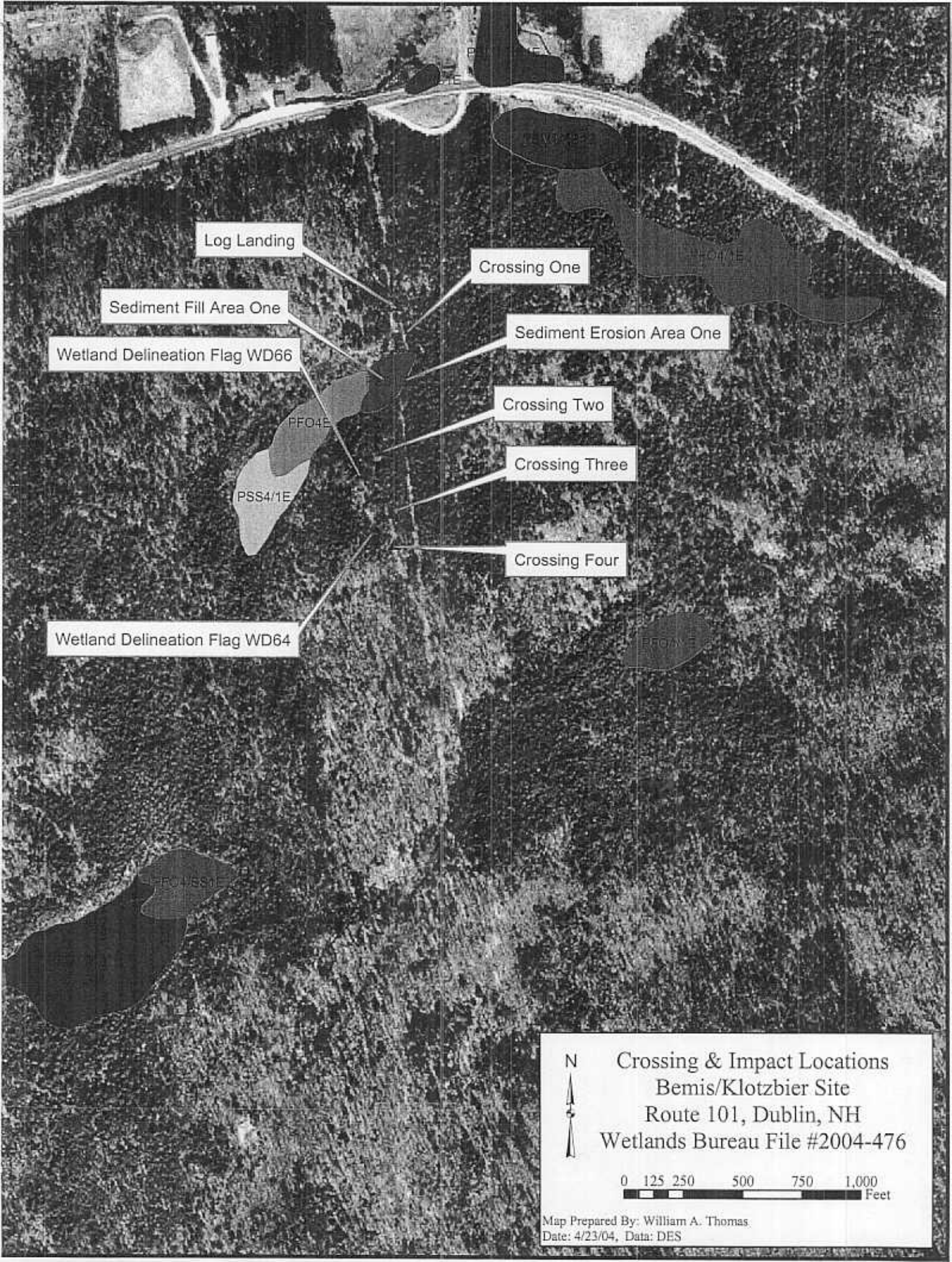
This Order is being recorded in the Cheshire County Registry of Deeds so as to run with the land.


COPY
Harry T. Stewart, Director
Water Division


COPY
Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR 7003 2260 0005 9209 9475
7003 2260 0005 9209 9468

cc: Gretchen R. Hamel, Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Dublin Board of Selectmen
Dublin Conservation Commission
Monadnock Septic Design, Attn: Carl Hagstrom



Log Landing

Sediment Fill Area One

Wetland Delineation Flag WD66

PFO4E

PSS4/1E

Wetland Delineation Flag WD64

Crossing One

Sediment Erosion Area One

Crossing Two

Crossing Three

Crossing Four

PFO4/SS1E



Crossing & Impact Locations
Bemis/Klotzbier Site
Route 101, Dublin, NH
Wetlands Bureau File #2004-476

0 125 250 500 750 1,000
Feet

Map Prepared By: William A. Thomas
Date: 4/23/04, Data: DES